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10/573,693

09/28/2006

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EXAMINER

XAVIER, VALENTINA

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/573,693 | Applicant(s) DE VRIES ET AL. | |
| | Examiner VALENTINA XAVIER | Art Unit 3644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/3/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, 11, 13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bompart et al (FR 2542572).

Art Unit: 3644

With regard to claim 1:

Bompart discloses a structure for aquaculture comprising at least two mutually spaced apart floating bodies (3), floating bodies mutually connected by connecting means (1), such that an open frame is formed by at least said connecting means (See Fig. 1), wherein at least between the floating bodies a series of breeding surfaces are provided (See Fig. 1), breeding surfaces extending substantially parallel to each other above each other (See vertical sections created in Fig. 1).

Claims 1 – 5 and 6 – 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gollott et al (US 4,266,509).

With regard to claim 1:

Gollott et al discloses a method and apparatus for offshore depurating habitat for shellfish comprising at least two mutually spaced apart floating bodies (cables 48 connected to 52), floating bodies mutually connected by connecting means (22, 26, 28, 32, 36), such that an open frame is formed by at least said connecting means (See Fig. 6), wherein at least between the floating bodies a series of breeding surfaces (44) are provided (See Fig. 6), breeding surfaces extending substantially parallel to each other above each other (See sections created by 42).

With regard to claim 2:

Art Unit: 3644

The breeding surfaces of Gollott et al are formed by rows of growing elements (shellfish) arranged substantially next to each other in receptacles 44.

With regard to claim 3:

Gollott et al discloses paths being provided (created by element 42) between the rows of growing elements located next to each other.

With regard to claim 4:

Gollot et al discloses the breeding surfaces being manufactured from plastic (See last line of Col. 3).

With regard to claim 6:

Gollott et al discloses the frame being provided with supporting means (18, 20) on which the breeding surfaces are mounted, such that the breeding surfaces are removable individually or in groups.

With regard to claim 7:

Gollott et al discloses the breeding surfaces having upstanding edges (see elements 44 in Fig. 6).

With regard to claim 8:

Gollott et al discloses four floating bodies (four suspension cables 48).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 – 11, and 13 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509).

With regard to claim 9:

Gollott et al shows in Fig. 6 that the distance between the floating bodies (the point at which they are anchored to the frame at 36) is relatively large relative to the height of the frame. Gollot et al fails to show specifically that the distance between the floating bodies is three or five times as much as the height of the frame. However, it would have been an obvious matter of design choice to use this distance, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

With regard to claim 10:

Gollot et al also shows that the breeding surfaces are situated relatively closely above each other but fails to show the distance being between 0.1 and 1 meter, more in particular between 0.1 and 0.5 meter and preferably between 0.25 and 0.5 meter. However, it would have been an obvious matter of design choice to use these given ranges, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

With regard to claim 11:

Gollot et al fails to show that the apparatus is self-lifting – however, with a more buoyant floatation device the apparatus would be able to achieve a self-lifting position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a floatation device to the apparatus in order to allow the apparatus to be positioned at any desired depth in the water.

With regard to claims 13 and 14:

Gollot et al does not disclose a ballast means, however, Examiner has already addressed the floating means in the discussion of claim 1, which does not necessarily require the use of a ballast means, and is only an option.

Gollot et al discloses the floating bodies (suspension cables 48) being cylindrical-shaped with a longitudinal axis including an angle (at the connection 36 to

Art Unit: 3644

frame) with the breeding surfaces and during use extending substantially vertically (See Fig. 1).

With regard to claim 15 – 18:

The discussion regarding claims 1 – 14 are relied upon for the structure recited in the instant claim. Therefore, the method steps of the instant claim(s) would be readily apparent during the use of the habitat for shellfish since similar structure is taught in the above discussion.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509) in view of Foster et al (US 6,044,798).

With regard to claim 12:

Gollot et al fails to show that the frame comprises of a number of subframes comprising a series of breeding surfaces. However, Foster et al teaches a floating aquaculture apparatus combining a series of units (34) used for aquaculture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this technique of supporting more than one unit or "sub frame" within a larger system for the predictable result of providing a larger habitat.

Conclusion

Art Unit: 3644

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALENTINA XAVIER whose telephone number is (571)272-9853. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Valentina Xavier

/Michael R Mansen/
Supervisory Patent Examiner, Art
Unit 3644

VX